

## United States Department of the Interior

### BUREAU OF LAND MANAGEMENT

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440 West 200 South, Suite 500  
Salt Lake City, UT 84101-1345  
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Div. of Oil, Gas & Mining

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### DECISION

Jim Butler  
Parsons, Behle & Latimer  
201 South Main Street  
Suite 1800  
Salt Lake City, Utah 84111

Surface Management  
SDR UT-15-003

### Moab Field Office Decision Set Aside and Remanded

Lisbon Valley Mining Co. LLC ("Lisbon Valley") through their attorneys, Parsons, Behle and Latimer, requested a State Director review of the Bureau of Land Management (BLM) Moab Field Office decision dated October 7, 2014, requiring the preparation of an Environmental Impact Statement (EIS) to analyze the Plan of Operations modification allowing partial pit backfilling. The request for State Director review was filed on November 10, 2014, and included a request for an oral presentation. The request was granted and a meeting was held on November 20, 2014.

### Background

The Lisbon Valley operation is an open pit copper mine consisting of a total of 1,103 acres, including BLM-administered lands (574 acres), state lands (273 acres) and privately owned land (256 acres). The original plan of operations was submitted on August 8, 1995. An Environmental Impact Statement (EIS) was prepared and the Record of Decision (ROD) was signed on March 26, 1997. The EIS analyzed the impacts from backfilling the open pits, either completely or partially. The ROD did not select the backfill alternative. This decision was appealed to the Interior Board of Land Appeals (IBLA) by the National Wildlife Federation, et.al. IBLA issued their decision on September 23, 1998, in which the ROD was affirmed in part, and set aside and remanded in part, to allow the BLM to reconsider the backfilling alternative. The BLM re-analyzed the data and concluded that their rationale for rejecting the backfill alternative was sound and reasoned, therefore no modification or change to the ROD



was made. Constellation Copper Corporation commenced construction activities in 1999 and later suspended mining in 2009. The operation was purchased by the current operator, Lisbon Valley, in 2009. On October 24, 2011 Lisbon Valley filed a request for a Plan of Operations modification to allow partial backfilling of the Centennial Pit.

### **Items Reviewed**

The first item of review is your concern that the Moab Field Office is requiring preparation of an EIS due to scientific controversy over the expected impacts of partial backfilling the Centennial Pit. Based on the record, there is confusion over when, or if, the modification submission was complete. In the chronology that was provided, the BLM requested additional information on several occasions. Until the requested information was received and the application for modification was deemed complete, it was premature to determine the level of National Environmental Policy Act (NEPA) analysis required. A review of the record reveals miscommunication and misunderstandings by both parties that have unfortunately lead to lengthy delays. In order to prevent future confusion and more timely processing, the Moab Field Office will be instructed to provide formal correspondence informing your client whether or not Lisbon Valley's submission is complete or has any specific deficiencies.

Lisbon Valley contends that the data collected and presented to date clearly shows that there is no uncertainty of impacts and no scientific controversy to post-mining groundwater quality associated with the partial backfilling modification. However, the record indicates that uncertainty remains. For instance, selected column tests (kinetic) were not conducted for a sufficient time period to provide a representation of quasi equilibrium conditions with respect to uranium concentrations in the pore fluids. Even though the BLM approved a *Work Plan for Additional Geochemical Testing of Lisbon Valley Mine Waste Rock* on February 12, 2014, the test was inconclusive in that the kinetic test was not run to the point of convergence<sup>1</sup>. Because of the short duration of the test, the concentration of uranium that can be potentially released by Bed 15 is indeterminate.

Further, the geochemistry of the waste rock material and hydrological model were reviewed by David Naftz Ph.D. and Tom Marston M.Sc. (research geochemist and hydrologist with USGS/Utah Water Science Center respectively) and Paul Summers (senior hydrogeologist at the BLM National Operations Center). Their assessments of the data provided by Lisbon Valley raised concerns that uranium concentration will remain above acceptable levels in post-mining ground water after more than three pore volumes have passed. Depending on the post-mining hydrology these results suggest the elevated uranium concentration could persist in the groundwater for hundreds or perhaps thousands of years and could migrate from the Centennial Pit. It appears that a lack of data and/or the interpretation of the existing data are the core issues in this case, rather than scientific controversy as it pertains to the NEPA. In the absence of basic scientific data, the preparation of an EIS will not resolve those core issues.

Another concern is if the proposed action being reviewed by BLM is the same that is being reviewed by the State of Utah, Department of Environmental Quality, Division of Water Quality. The August 12, 2014, letter to Moab Field Office Manager Beth Ransel from Dan Hall refers to

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<sup>1</sup> Convergence is when the leachate solution begins to converge toward the composition of the head solution indicating leaching has essentially ceased.



the Modification as "Backfilling the Centennial Pit." The BLM record refers to the modification as a "partial backfill." It also appears that USGS, the State Minerals Reclamation Program and the Moab BLM Field Office all have different understanding of what the proposal is (complete or partial backfilling of the Centennial Pit)<sup>2</sup> and whether or not the modeling predicts a pit lake.<sup>3</sup> It is vitally important to ensure that the Plan of Operations modification is complete and that State regulators and BLM personnel are evaluating the same proposal.

The question is also raised as to whether the proposed modification can be analyzed using an EA. Lisbon Valley correctly points out that the IBLA conducted a *de novo* review of the record in 1998. The issue of pit backfilling has been addressed in the 1996 Draft EIS, the 1997 Final EIS, the 1997 ROD and the Memorandum dated January 25, 1999. A Memorandum of Understanding between BLM Moab Field Office, Lisbon Valley Mining Company LLC and Whetstone Associated, Inc. has been established to prepare an EA to consider the impacts of backfilling the Centennial pit. The key to getting the permitting and NEPA process back on track is for both parties to work together to resolve inconsistencies in the information provided. Once the data is determined to be sufficient and general agreement in its interpretation is reached, preparation of an EA is a viable approach to assessing environmental impacts. Any analysis must address each reason given in the 1997 ROD and Memorandum dated January 25, 1999 as to what has changed to reverse BLM's 1997 decision that pit backfilling has the potential for alkaline mobilization of oxyanions in post-mining groundwater by placing waste rock in saturated conditions. If a Finding of No Significant Impact cannot be reached, then an EIS should be prepared if Lisbon Valley would still like to pursue the modification.

### **Decision**

Based on the foregoing, it is my decision to set aside the Moab Field Office decision to prepare an EIS and remand this issue to the field office for further analysis and resolution of technical discrepancies. I will direct the Moab Field Office to meet with Lisbon Valley as soon as possible to fully address what the BLM needs relative to testing procedures, resolution of contradicting information and any additional information that must be submitted prior to proceeding with the NEPA process.

### **Appeal of the Decision**

This decision may be appealed to the IBLA in accordance with the regulations contained in 43 CFR, part 4 and the enclosed Form 1842-1. If an appeal is taken, your Notice of Appeal must be filed in this office, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101 within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error. This decision will remain in effect while the IBLA reviews the case, unless a stay is granted by the IBLA. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

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<sup>2</sup> The terminology used throughout the administrative record lacks definition and clarity as to the meaning and use of the terms "backfill" and "partial backfill" -- especially with respect to the issue of whether a residual pit lake will be present or not following the backfilling operation.

<sup>3</sup> See Appendix B, Lisbon Valley Mine Centennial Pit Groundwater Model Report, March 2014



### **Request for a Stay**

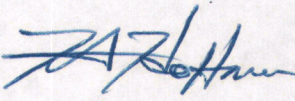
If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by IBLA, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the IBLA and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

### **Standards for Obtaining a Stay**

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal must show sufficient justification based on the following standards:

1. The relative harm to parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether the public interest favors granting the stay.

If you have any questions, please contact Terry Snyder of this office at (801) 539-4026.

  
for  
Juan Palma  
Utah State Director

Enclosure:

1. Form 1842-1

cc: BLM Canyon Country District Office (UTY00)

BLM Moab Field Office (UTY01)